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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 002568

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TAGS: [IZ](#) [PGOV](#) [PREL](#) [KDEM](#)
SUBJECT: OPTIONS NARROW AS PARLIAMENT DEADLOCKED ON
ELECTION LAW

REF: A. BAGHDAD 1997
[1](#)B. BAGHDAD 2243

Classified By: Political Minister-Counselor Gary A. Grappo for reasons
1.4(b) and (d).

[1](#)1. (C) SUMMARY: With the self-imposed deadline of October 15 fast approaching, Iraqi politicians are still haggling over the terms of a law for the national elections scheduled for January 16. Political posturing over hot-button issues -- in particular Kirkuk -- is complicating parliamentary debate. At this time, the Council of Representatives (CoR) appears to be considering three main options: passage of a new election law; passage of a limited amendment of the December 2005 election law; or agreement that the December 2005 law should be used with no changes. The Independent High Electoral Commission (IHEC) notes that each day without a law in place means one less day it has to prepare for the elections. Still, IHEC and others involved in elections preparation, including UNAMI, remain confident, albeit anxious, that a law will be passed just in time and, hedging their bets, are proceeding with plans that assume that the rules for January 2010 will largely mimic those for December [1](#)2005. END SUMMARY.

Election Law Basis - 2005 or Something New?

[1](#)2. (C) In July, an ad-hoc subcommittee of the Legal Committee in the Parliament undertook an effort to draft a new election law that incorporated many provisions from the 2008 Provincial Election Law (Ref A). Due to an inability to reach consensus and weak parliamentary procedures, the process broke down in the Legal Committee before the draft could be presented to the Parliament for a first reading. Last week, interest in this draft law was reinvigorated when the Cabinet approved comments on the draft legislation and sent them to the Legal Committee for review. The Cabinet's comments -- presumably encouraged by PM Maliki -- appear designed to push Parliament to approve an election law that is more ambitious than the 2005 election law. Through its comments, the Cabinet endorses legislation that resembles the 2008 Provincial Election Law, including use of a hybrid open list system, multiple voting districts based on Ministry of Planning population estimates, provisions for Internally Displaced Persons (IDP), quota seats for minority parties, and provisions for Special Needs Voting (SNV) for members of the military and the police. None of these measures appear in the 2005 election law.

[1](#)3. (C) With time running short before the Parliament's self-imposed deadline to pass a law by October 15, some lawmakers are seeking to revert to the December 2005 election law. The December 2005 law established a closed-list electoral system in multiple districts (one district for each province, plus a nineteenth district for "at large" candidates). Many of the political players privately prefer the closed-list electoral system because it offers more predictability in ranking candidates as party leaders attempt

to forge election coalitions. However, for this reason the 2005 election law falls short of Ayatollah Sistani's support for an open-list system like that used in the January provincial elections.

14. (C) The 2005 election law contains at least two provisions that require further clarification before it can be used for national elections. First, in 2005, Article 15 established the size of the CoR at 275 members. However, with Iraq's population growth, this number no longer complies with the constitutional rule that sets Parliament's size at one seat per 100,000 citizens. For this reason, the CoR will need to amend the 2005 law to set the seats at roughly 310 members. Second, after a lawsuit filed by the Tawafuq Bloc in 2006, the Federal Supreme Court ruled that the method of seat allocation in Article 15 is unconstitutional. To bring the 2005 election law into compliance, the CoR will need to amend the law to say that seats are allocated according to the estimated size of the population in each district. (NOTE: U.S.-funded technical advisors have recommended that these provisions be addressed in either a new election law or through amendment of the 2005 election law. END NOTE.) However, the CoR could also opt to use the 2005 election law without amendment, and could direct IHEC to address these measures through regulation. Technical advisors note that this approach risks attracting additional lawsuits and challenges to the credibility of the electoral process. Whatever draft is passed by the CoR will then be reviewed by the Presidency Council, which holds veto power.

Voter Registry in Kirkuk

BAGHDAD 00002568 002 OF 002

15. (C) During the debate on draft legislation, Sunni Arab politicians again made hay of the issue of voting in Kirkuk province, threatening to block agreement on a law unless it includes specific provisions on Kirkuk. Sunni Arabs fear that if Kirkuk voted on the basis of the current voter registry for Kirkuk, which would include some 300,000 Kurds that have moved into the province since 2004, the same basis might be used again in future provincial elections or in a referendum to determine whether Kirkuk should become part of the Kurdistan Region, officially tipping the balance of power to the Kurds (Ref B). (NOTE: Related disagreements kept Kirkuk from participating in the January 2009 provincial elections, but did not interfere with its inclusion in the December 2005 national elections. END NOTE.) Speaker Samarraie has floated the idea of creating a special parliamentary committee to review the voter eligibility of the 300,000 new Kirkuki residents, but UNAMI and others assess it will be impossible to implement in the short time left before elections in January.

Legal Committee Deadlocked Again

16. (C) The disagreement over open- versus closed-list systems and Kirkuk have yet to be resolved in the CoR's Legal Committee. Speaker Samarraie called a special meeting of party bloc leaders on September 13 to urge them to find agreement on a single draft law. The CoR went into recess before any consensus emerged. Lawmakers will take up the debate again when they return to session on September 29.

17. (C) COMMENT: We continue to weigh in with senior Iraqi officials, underlining the urgency of prompt passage of an election law and reinforcing the message that UNAMI and key technical assistance providers are making. Despite the apparent impasse, these contacts assure us that in the end, perhaps a bit late, the GOI will establish an election law that can be used for national elections on January 16, 2010.

We intend to keep up the pressure in the next few weeks and hold them to their word.

¶8. (C) With the Cabinet's call for national elections on an open-list system, Maliki has thrown down the gauntlet, and the CoR will be expected to respond. Although Maliki would most likely do better in his efforts to build a cross-sectarian coalition with an open-list system, we suspect that in the end he will accept whatever the the CoR passes. Regarding complaints about Kirkuk, they can likely be addressed through some kind of statement by the CoR or the Presidency Council that the current voter registry cannot be used again after this election. However, Sunni Arabs will likely continue to harp on this issue as the broader election law debate continues. At this moment, prospects for a successful election law seem balanced between the pragmatism of the Parliament's Speaker, the calculus of the political bloc leaders, and the tenacity of U.S. and UN technical assistance providers. END COMMENT.
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